UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

THE FARMWORKER ASSOCIATION OF FLORIDA INC., *et al.*,

Plaintiffs,

v. Case No. 1:23-cv-22655-RKA

RONALD D. DESANTIS, in his official capacity as Governor of the State of Florida, *et al.*,

Defendants.

RESPONSE TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs seek the extraordinary relief of a preliminary injunction on the ground that asylum applicants, aliens with pending removal proceedings, and other similar categories of immigrants can no longer obtain transportation into the State of Florida. Plaintiffs, however, misread § 787.07 as amended by Senate Bill 1718 (SB 1718).

The challenged statute prohibits knowingly transporting individuals across state lines—both aliens and U.S. citizens alike—when the federal government has had no opportunity to inspect them following an illegal border crossing. Inspections serve several important purposes, including screening for communicable diseases, searching for contraband such as illicit fentanyl, and determining if a person is a threat to national security. A person who has not been inspected should be reported to the federal government, not intentionally moved across the country, and Florida's law codifying that commonsense proposition is neither preempted nor vague.

This Court, however, need not reach the merits of Plaintiffs' claims for purposes of denying Plaintiffs' motion. Out the gate, Plaintiffs come to this Court with unclean hands. They openly admit that a motivation for seeking preliminary relief is to facilitate ongoing violations of state and federal law—some of them unrelated to immigration. Plaintiffs also lack standing. Most Plaintiffs rely on conduct that is not prohibited by § 787.07, and the remaining Plaintiffs similarly lack standing.

Should the Court reach the merits, Plaintiffs lack a cause of action in federal court to bring their preemption claim, and they fail to demonstrate that § 787.07 is inconsistent with federal law or unconstitutionally vague. The Court should deny the motion.[1]

BACKGROUND

On May 10, 2023, Governor DeSantis signed SB 1718 into law. *See* Ch. 2023-40, Laws of Fla. Section 10 of SB 1718 amends § 787.07, Florida Statutes, to provide that "a person who knowingly and willfully transports into this state an individual whom the person knows, or reasonably should know, has entered the United States in violation of law and has not been inspected by the Federal Government since his or her unlawful entry from another country commits a felony of the third degree."

The changes to § 787.07 went into effect on July 1, 2023. Plaintiffs—nine individuals seeking to proceed anonymously and one organization—challenge § 787.07, as amended, on two grounds. First, they argue that the Immigration and Nationality Act (INA) preempts § 787.07. Doc. 1 ¶¶ 127–39.[2] Second, they argue that § 787.07 violates the Due Process Clause of the Fourteenth Amendment because it is unconstitutionally vague. Doc. 1 ¶¶ 140–50.

Although Plaintiffs filed their suit on July 17, they did not serve all Defendants until August 22. Doc. 28. Plaintiffs did not serve the State Defendants with the pending motion until September 1. Doc. 41.

LEGAL STANDARD

A district court may issue a preliminary injunction only if Plaintiffs show "(1) a substantial likelihood of success on the merits; (2) that the preliminary injunction is necessary to prevent irreparable injury; (3) that the threatened injury outweighs the harm the preliminary injunction would cause the other litigant; and (4) that the preliminary injunction would not be [adverse] to the public interest." *Gissendaner v. Comm'r, Ga. Dep't of Corr.*, 779 F.3d 1275, 1280 (11th Cir. 2015) (quotations omitted). "[A] preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly establishe[s] the burden of persuasion as to each of the

[1] As the State Defendants have explained, if the Court denies any individual Plaintiff anonymous treatment, it should dismiss the Complaint and deny Plaintiffs' motion for preliminary injunction as moot. *See* Doc. 39; *see, e.g.*, *NRA v. Bondi*, No. 4:18-cv-137, 2018 WL 11014101, at *6 (N.D. Fla. May 13, 2018) (ordering an organizational plaintiff to file an amended complaint after denying anonymous treatment to an individual plaintiff).

[2] Citations to filings are to paragraph number or ECF page number not internal page number.

four prerequisites." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc) (quotations omitted).

ARGUMENT

I. PLAINTIFFS' MISREADING OF § 787.07 INFECTS THEIR ANALYSIS.

Section 787.07(1) provides that "a person who knowingly and willfully transports into this state an individual whom the person knows, or reasonably should know, has entered the United States in violation of law and has not been inspected by the Federal Government since his or her unlawful entry" commits a felony. Because the proper interpretation of § 787.07 is disputed, resolving that dispute affects several issues in this case. *See, e.g.*, *Arizona v. United States*, 567 U.S. 387, 413–15 (2012) (explaining that a plaintiff is not entitled to a preliminary injunction when a statute "could be read" by state courts "to avoid" any concerns).

There is some tension in Plaintiffs' motion, as they confidently assert that § 787.07 "prevents immigrants from attending their immigration court hearings," Doc. 30-1 at 9, but also contend that the law leaves officers "with no hope of understanding what [the law] prohibits and to whom it applies," Doc. 30-1 at 20. In any event, Plaintiffs misread § 787.07.

First, contrary to Plaintiffs' contentions, § 787.07 does not uniquely regulate "immigrants." Doc. 30-1 at 5. Rather, the statute regulates "persons," which include aliens and U.S. citizens alike. *Cf. Plyler v. Doe*, 457 U.S. 202, 210 (1982) ("Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term.").

Second, and relatedly, the phrase "has entered the United States in violation of law" merely recognizes that *any* person entering the United States must present himself to customs officials and that failure to do so is unlawful. *See* 19 U.S.C. § 1459 (regulating entry by any person); *United States v. Ramos-Moran*, No. 19-cr-2984, 2019 WL 4393670, at *5 (S.D. Cal. Sept. 13, 2019) (noting that § 1459 applies to U.S. citizens); *see also* 8 U.S.C. § 1325 (imposing additional penalties on aliens who enter unlawfully).

Third, the term "inspected" refers to any instance in which the federal government can decide whether to take action against a person. To "inspect" something is to "examine [it] officially," "to look carefully," or to "make an examination."[3] Inspect, Webster's Third

[3] *Webster's* also defines "inspect" to mean "to view closely and critically," but § 787.07 refers to inspection "by the federal government," and "examine officially" is the more relevant definition.

International Dictionary 1170; *see also Tsuji v. Fleet*, 366 So. 3d 1020, 1028 (Fla. 2023) ("Absent a legislatively supplied definition, we give [words their] 'plain and ordinary meaning' at the time of the statute's enactment, and we often look to contemporaneous dictionaries for evidence of that meaning."). "Inspected" thus denotes an opportunity to examine a person, not a final decision on the person's admissibility or legal status. *Cf. Matter of G*, 3 I. & N. Dec. 136, 138 (BIA 1948) (explaining that being "inspected" means giving immigration officials an *opportunity* to question an alien).[4]

Moreover, the statute's title—"human smuggling"—confirms that it regulates persons who are operating in a clandestine manner, *i.e.*, without the federal government's knowledge. *See* § 787.07, Fla. Stat.; Smuggle, Oxford English Dictionary (2d ed. 1989) ("to convey . . . in a stealthy and clandestine manner"); *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008) (noting that statutory titles "are tools available for the resolution of a doubt about the meaning of the statute"); *accord State v. Webb*, 398 So. 2d 820, 824–25 (Fla. 1981).

Indeed, in federal law, an "inspection" is complete even if no decision is made as to admission. *See, e.g.*, 8 U.S.C. § 1225(a)(2) (discussing referring an alien for further proceedings "[u]pon inspection"); 19 U.S.C. § 1459(a), (d) (requiring individuals arriving in the United States to present themselves "for inspection"); *see also Matter of Quilantan*, 25 I. & N. Dec. 285, 293 (BIA 2010) (defining "inspected *and admitted*" (emphasis added)). And federal law mandates inspections even if a person is encountered in the interior years after unlawful entry. *See* 8 U.S.C. § 1225(a)(1) (defining "applicant for admission" to include "[a]n alien present in the United States who has not been admitted"); 8 U.S.C. § 1225(b) (requiring *all* applicants for admission to be inspected).

In light of the above, most of Plaintiffs' concerns about § 787.07 are simply misplaced. Visa holders, DACA recipients, and aliens with pending applications for asylum or removal proceedings have all been "inspected" because they have notified the federal government of their presence, and the federal government can decide whether to take immediate action. To be sure,

---

See Conage v. United States, 346 So. 3d 594, 600 (Fla. 2022) (looking to context to confirm plain meaning); *accord United States v. Munksgard*, 913 F.3d 1327, 1334–35 (11th Cir. 2019).

[4] Dictionary definitions, rather than the INA, are the proper source to interpret the term "inspected." *See* Doc. 30-1 at 17 n.9 (in which Plaintiffs assert that the Legislature expressly declined to "import [the] INA definition of 'inspect' into [§ 787.07]").

Plaintiffs contest this reading. But in a pre-enforcement challenge, it is enough that the statute "could be read" in the manner offered by the State Defendants. *See Arizona*, 567 U.S. at 413–15; *cf. Polite v. State*, 973 So. 2d 1107, 1111 (Fla. 2007) (discussing the rule of lenity). Moreover, the State Defendants have "taken the position" that the challenged provision "ha[s] no application" beyond the interpretation described above, eliminating any credible threat of prosecution for behavior not covered by the State Defendants' reading. *Wilson v. State Bar of Ga.*, 132 F.3d 1422, 1428–29 (11th Cir. 1998).

II. PLAINTIFFS LACK STANDING.

To establish standing, a plaintiff must prove: "(1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020). The injury must be "concrete and particularized" and "actual and imminent, not conjectural or hypothetical." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009); *accord Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (explaining that injury must be "certainly impending" and that "allegations of possible future injury" do not suffice (quotations omitted)).

A. The organizational Plaintiff lacks standing.

An organization may prove standing through either associational standing (injury to its members) or organizational standing (injury to itself). *See City of S. Miami v. Governor*, 65 F.4th 631, 637 (11th Cir. 2023). The Farmworker Association proves neither.

i. *The Farmworker Association lacks associational standing.*

The Farmworker Association lacks associational standing because it has not shown that any of "its members would otherwise have standing to sue in their own right." *Jacobson*, 974 F.3d at 1249 (quotations omitted).

First, the Farmworker Association has not identified a member who will be harmed by the challenged law. Its attached declaration references anonymous "FWAF member[s]," Doc. 30-3 at 6–10, as does its motion, Doc. 30-1 at 8. But the Supreme Court "has required plaintiffs claiming an organizational standing to identify members who have suffered the requisite harm." *Summers*, 555 U.S. at 499; *accord Jacobson*, 974 F.3d at 1249 (finding no standing because the plaintiff organization "failed to identify any of its members, much less one who will be injured" by the challenged statute). This "requirement" may be "dispensed with . . . only where *all* the members of the organization are affected by the challenged activity," *Summers*, 555 U.S. at 498–99, but that

is not the case here, Doc. 1 at 8 (discussing the effect on "[s]ome members"). *See also Fla. State Conference of NAACP v. Browning*, 522 F.3d 1153, 1160 (11th Cir. 2008) (declining to require the identification of a member because "every member" faced a risk of harm).

Second, even assuming the Farmworker Association alleges some injury, its vague allegations fail to establish one that is "imminent." *See* Doc. 30-3 at 8–9. The Association offers no "description of concrete plans" or "specification" of when its members will drive uninspected persons *into* the State. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992) (explaining that mere "intentions" do not suffice). Instead, the Farmworker Association describes past conduct and then asserts that each member "fears" that similar conduct in the future will "expose" the member to felony charges. Doc. 30-3 at 8–9.[5] But vague fears of harm, without any concrete plans that would trigger enforcement, are not enough. *See Summers*, 555 U.S. at 496 (holding that a "vague desire to return [to a national forest] is insufficient to satisfy the requirement of imminent injury"); *Wilson*, 132 F.3d at 1428 (explaining that a plaintiff must face a "credible threat of prosecution" to establish standing); *City of S. Miami*, 65 F.4th at 637 (explaining that "[t]he Supreme Court [has] made clear that past occurrences of unlawful conduct do not establish standing to enjoin the threat of future unlawful conduct").

Third, the Farmworker Association's general allegations involve, in many instances, conduct that does not violate the statute. *See Wilson*, 132 F.3d at 1428–29 (explaining that a plaintiff lacks injury when his conduct does not violate the challenged statute). The Association, for example, relies on the transportation of passengers who have obtained lawful status or have pending removal proceedings. Doc. 30-3 at 6, 8–9. But such individuals have been "inspected" under § 787.07, and those who transport them will not face prosecution.

ii. *The Farmworker Association lacks organizational standing.*

The Farmworker Association attempts to prove organizational standing through two methods: (1) lost revenue through lost membership and (2) the forced diversion of resources away from its core mission. Both methods fail.

As to lost membership, the Association asserts that "[a]pproximately 600 families that include dues-paying" members left Florida in May 2023, and that "approximately 100 member families will not return if SB 1718 remains in effect[] because they do not want to risk a felony

[5] Plaintiffs do not clearly indicate that any of the individual Plaintiffs are members of the Farmworker Association. But as explained below, no individual Plaintiff has standing either.

charge." Doc. 30-3 at 12. These assertions are speculative. The Farmworker Association points to no evidence that any member left or will not return because of SB 1718. *See Clapper*, 568 U.S. at 411 (discussing a similar lack of evidence); *see also Pernell v. Fla. Bd. of Governors of State Univ. Sys.*, 641 F. Supp. 3d 1218, 1245–46 (N.D. Fla. 2022) (collecting cases showing a need to present "evidence [of] specific facts" supporting standing to obtain a preliminary injunction).

Equally important, the Association fails to distinguish between changes to § 787.07 and other changes to Florida law implemented by SB 1718. Some of these changes, unlike § 787.07, expressly regulate illegal aliens and are thus far more likely to cause illegal aliens to leave Florida. These changes include, for example, E-Verify requirements making it more difficult for illegal aliens to obtain work, driver's license restrictions applicable to illegal aliens, and requirements for hospitals to collect immigration status information. That the Association discusses the effects of SB 1718 in general, without discussing the challenged provisions specifically, is thus at best sloppy and at worst misleading. Either way, the Association's failure to disaggregate the effects of unchallenged provisions of SB 1718 is fatal. *See Maverick Media Grp., Inc. v. Hillsborough Cnty.*, 528 F.3d 817, 820 (11th Cir. 2008) (explaining that a plaintiff cannot establish redressability if the injury would continue because of some action not challenged in court); *KH Outdoor, LLC v. Clay Cnty.*, 482 F.3d 1299, 1303–04 (11th Cir. 2007) (similar).[6]

As to diversion of resources, the Farmworker Association's theory fails for four reasons.

First, the Association has not shown an "injury to the identifiable community that [it] seeks to protect." *City of S. Miami*, 65 F.4th at 638. To qualify, the injury to that community must "itself [be] a legally cognizable Article III injury," *id.* at 638–39, and must be concrete and imminent rather a mere "'fear[] of hypothetical future harm that is not certainly impending,'" *id.* at 638 (quoting *Clapper*, 568 U.S. at 416). While the Association broadly gestures at prosecution of its members, Doc. 30-3 at 8 (explaining that member behavior "*could* trigger . . . a felony charge" (emphasis added)), it fails to provide any specific facts showing that any member of the community it serves faces imminent prosecution.

Second, the Farmworker Association has not explained how § 787.07 "*forc[es]* the organization to divert resources to counteract" illegal acts. *Browning*, 522 F.3d at 1165 (emphasis

[6] While the Association does say that its members are motivated by a desire not to "risk a felony charge," Doc. 30-3 at 12, the challenged provision is not the only felony created by SB 1718, *see* § 448.09(5), Fla. Stat. (making it a felony to use fraudulent identification to obtain employment).

added); *accord Ga. Latino All. for Human Rights v. Governor of Ga.*, 691 F.3d 1250, 1259–60 (11th Cir. 2012). While the Association points in conclusory fashion to "work we have had to do in response to SB 1718," Doc. 30-3 at 5, it provides no details showing how § 787.07 forced the diversion, *see City of S. Miami*, 65 F.4th at 639 (explaining that an organization cannot "spend its way into standing"); *El Paso Cnty. v. Trump*, 982 F.3d 332, 343 (5th Cir. 2020) (explaining that "an organization does not automatically suffer a cognizable injury in fact by diverting resources in response to a defendant's conduct").

Moreover, as discussed above, SB 1718 has several other provisions, and many of the Association's allegations tie its diversion to the *entirety of* SB 1718, not merely § 787.07. *See* Doc 30-3 at 5 (discussing "the work we have had to do in response to SB 1718"); Doc. 30-5 at 5 (discussing "concerns related to SB 1718"); Doc. 30-3 at 10 (discussing the effect of "[t]he passage of SB 1718"); Doc. 30-3 at 10 (discussing "Know Your Rights presentations . . . on the impacts of SB 1718, including [§ 787.07]"); Doc. 30-3 at 10 (discussing "member meetings regarding SB 1718, including [§ 787.07]"); Doc. 30-3 at 11 (explaining that "staff received more calls each day since SB 1718 passed than we received prior to its passage").

Similarly, the Association relies on diversions that allegedly occurred before § 787.07's July 1 effective date. *E.g.*, Doc. 30-3 at 4 (discussing events that occurred before May 2023). But for purposes of standing, there is a critical difference between responding to the law and responding to "speculative fears" about the law. *See City of S. Miami*, 65 F.4th at 640.

Third, the Farmworker Association has not shown that any injury is "closely connected to the diversion." *Id.* at 638–39. The Association must show "what harm [it] is seeking to counteract and how its diversion of resources is aimed" at preventing that harm. *Cousins v. Sch. Bd. of Orange Cnty.*, No. 6:22-cv-1312, 2023 WL 5836463, *6 (M.D. Fla. Aug. 16, 2023) (Berger, J.). The Association alleges that it has diverted resources to provide "Know Your Rights presentations." Doc. 30-3 at 10. But it provides no details on the content of those presentations and does not explain how the presentations ameliorate its alleged harm. *See Cousins*, 2023 WL 5836463, *6 (noting that the plaintiff failed "to show any logical connection between" the diversion of resources and "combating the alleged injuries"). Further, the Association again admits that its presentations concern SB 1718 *in general*. Doc. 30-3 at 10.

Fourth, the Association has not alleged how an injunction by this Court would redress its diversion of resources. *See Cousins*, 2023 WL 5836463 at *6 (finding no standing because an

organization did not make this showing). The Association admits that its presentations and education concern all of SB 1718, not just § 787.07. Doc. 30-3 at 10–11. And the Association does not allege that it will cease its SB 1718 related activities or stop receiving member phone calls if this Court enjoins enforcement of § 787.07. Nor is it likely that the Association will do so given the unchallenged provisions of SB 1718 and their effect on illegal immigrants.

B. The individual Plaintiffs lack standing.

While none of the individual Plaintiffs has standing, each presents distinct circumstances, as explained in detail below. Broadly speaking, Plaintiffs lack standing for at least four reasons.

First, a plaintiff lacks standing if the conduct he alleges does not violate the challenged statute. *See Wilson*, 132 F.3d at 1428–29. In this case, several Plaintiffs lack standing either because the transportation they allege is intrastate or because the individuals they plan to transport have been "inspected." These Plaintiffs face no credible threat of prosecution.

Second, a plaintiff lacks standing if he fails to provide concrete plans to imminently engage in conduct that violates the challenged statute. *Lujan*, 504 U.S. at 564. Several Plaintiffs fail to allege any such concrete plans.

Third, a plaintiff lacks standing if he lacks any "legally protected interest" in the conduct he seeks to vindicate. *Lujan*, 504 U.S. at 560. Here, multiple Plaintiffs assert as injury their inability to continue driving without a license or their inability to continue working without legal authorization. But this conduct violates the law. § 322.03, Fla. Stat. (making driving without a license a crime); 8 U.S.C. § 1324a (making working without authorization unlawful); § 448.095, Fla. Stat. (similar).[7] By definition, a plaintiff cannot have a legally protected interest in illegal conduct. *See Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1093 (10th Cir. 2006) ("[A] person complaining that government action will make his criminal activity more difficult lacks standing because his interest is not legally protected").

Fourth, insofar as any Plaintiff relies on his inability to *obtain* transportation as a passenger, rather than a threat of prosecution based on his status as a driver, Plaintiffs fail to provide sufficient facts to support that theory of standing. Because such a theory rests on "asserted injury aris[ing] from the government's allegedly unlawful regulation (or lack of regulation) of *someone else*, much

[7] To be clear, working without authorization is a crime for the employer rather than the employee. But a plaintiff cannot have a legally protected interest in prohibited conduct, even if the plaintiff is not the one who bears criminal responsibility.

more" specific evidence "is needed." *Lujan*, 504 U.S. at 562. But no Plaintiff offers specific evidence regarding the behavior of third parties as a result of the challenged statute.

AM

AM lacks standing for the first and second reasons discussed above (her conduct does not violate the statute and she offers no concrete plans). The only individuals she identifies have been inspected under § 787.07, Doc. 30-4 at 2–3 (describing driving individuals to appointments with federal authorities), and she describes no concrete plans to transport those individuals across state lines in any event, Doc. 30-4 at 4 (describing a woman from "Yucatan" who "was given a list of places where she could go [for] dialysis," which AM "believe[s] includes . . . Jacksonville").

JL

JL lacks standing for all four reasons discussed above. His declaration is so general that it is hard to be confident whether the passengers he described have been inspected or not. *See* Doc. 30-5 at 3 ("I drove with four passengers who came to help me as volunteers. I believe one or two of them were undocumented, based on their conversations with me."). Neither does he allege any concrete plans to violate the statute in the future. Regarding a legally protected interest, he seeks to vindicate his ability to drive, Doc. 30-5 at 3, but he admits that he does not "have a driver's license," Doc. 29-2 at 2. He also seeks to vindicate his ability to work, Doc. 30-5 at 3, but he lacks legal authorization to work in the United States, Doc. 30-5 at 2 ("I have never had contact with immigration authorities."); 8 U.S.C. § 1324a (prohibiting employment of unauthorized aliens); § 448.095, Fla. Stat. (similar). Insofar as he alleges an inability to obtain transportation, he fails to provide sufficient details on the likely behavior of third parties, Doc. 30-5 at 4 ("[I]f I allow a trusted co-worker to drive, he or she could be prosecuted."), and it appears that any interstate travel would relate to his employment, which is not legally protected because his employment relationship is unlawful.

RM

RM lacks standing for the first and second reasons discussed above (his conduct does not violate the statute and he offers no concrete plans). Most importantly, his allegations regarding driving passengers *into* Florida involve individuals who have been inspected. *See* Doc. 30-6 at 4 (discussing meetings with the federal government and formal applications for a visa). Moreover, his allegations all relate to past conduct and fail to show concrete plans to violate the challenged statute in the future.

CA

CA lacks standing based principally on the first reason (his conduct does not violate the statute). The person he wishes to transport across state lines is his grandson, who has a pending petition with federal authorities for a change in status. Doc. 30-7 at 2–3. Under § 787.07, his grandson has been "inspected," and CA's conduct would not violate the challenged statute.

MM

MM lacks standing based principally on the first reason (her conduct does not violate the statute). The person she wishes to transport across state lines is her daughter, who has a pending application with federal authorities for DACA benefits. Doc. 30-8 at 2. Under § 787.07, her daughter has been "inspected," and MM's conduct would not violate the challenged statute.

DM

DM lacks standing for all four reasons discussed above. He has no driver's license so has no legally protected interest in driving. Doc. 30-9 at 2. Nor does he allege an intention to drive anyone across state lines, much less a person who has not been inspected. Finally, he has applied for DACA and, as such, transporting him across state lines is not a crime. Doc. 30-9 at 2. Any third party's decision not to transport him across state lines is not caused by § 787.07 but by the third party's misreading of § 787.07. *See Lujan*, 504 U.S. at 560 (explaining that a plaintiff's injury must be "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court"). Ditto with respect to his family's decision to cancel an *intrastate* vacation to Disney World. Doc. 30-9 at 2.

AC

AC lacks standing for at least the first reason (his conduct does not violate the statute). He says he wants to transport two family members across state lines, but both family members have pending immigration cases. Doc. 30-10 at 2. As such, both family members have been inspected, and his proposed course of conduct would not violate the challenged statute.

GDL[8] & MG

While their declarations do not expressly say so, it is clear that GDL and MG are married. *See* Doc. 29-8 at 2–3; Doc. 30-11 at 2–3; Doc. 30-12 at 2–4; Doc. 29-9 at 2–3.

[8] GDL's declaration in support of anonymous treatment lists his initials as "JDL" rather than "GDL," but it is clear this is the same person. *Compare* Doc. 29-8, *with* Doc. 30-11.

GDL lacks standing principally for the third reason discussed above (lack of a legally protected interest). He seeks to vindicate his ability to drive, Doc. 30-11 at 2 ("I usually drive."), but he does not allege that he has a driver's license, and his description of his own immigration status suggests he is not eligible for one in Florida. *See* Doc. 30-11 at 2. He also seeks to vindicate his ability to work, but his declaration suggests that he is not legally authorized to work in the United States. *See* Doc. 30-11 at 2; Doc. 29-8 at 2 ("I fear that I will lose my job . . . [if] people . . . learn that I am undocumented").

MG's declaration raises substantial questions regarding her truthfulness or the truthfulness of GDL. She asserts that GDL "has a driver's license." Doc. 30-12 at 2. But if he does, then either GDL's description of his immigration status is inaccurate or GDL obtained his driver's license through fraud. *See* § 322.08(2)(c)7–8, Fla. Stat. (requiring an applicant for a driver's license to demonstrate "continuous lawful presence"); Doc. 30-11 at 2 (explaining that GDL is a Florida resident).

In any event, MG lacks standing for all four of the reasons discussed above. Some of her alleged conduct involves *intrastate* travel, *see* Doc. 30-12 at 3 (discussing a doctor's appointment in Boca Raton), but that conduct does not violate the statute. Insofar as she discusses interstate travel, she alleges no imminent or concrete plans. Rather, she discusses only past plans involving the "summer harvest." Doc. 30-12 at 2–3. Regarding legally protected interests, the two interests she seeks to vindicate are her ability to drive and her ability to work, but she lacks a driver's license and lacks legal authorization to work. *See* Doc. 30-12 at 2–3; Doc. 29-9 at 2 ("I am . . . afraid that . . . I will lose [my] job[]"). Finally, insofar as her theory is that she cannot obtain interstate transportation because her husband is deterred from driving her, MG lacks a legally protected interest in obtaining transportation from her husband because he lacks a valid driver's license, either because she is being untruthful about his license or because he obtained it through fraud.

III. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS.

A. Plaintiffs are not likely to succeed on the merits of their preemption claim.

i. *Plaintiffs lack a cause of action*.

Plaintiffs are not likely to succeed on the merits of their preemption claim because they lack a cause of action to challenge § 787.07 as preempted. Plaintiffs argue that § 787.07 is preempted by 8 U.S.C. § 1324 specifically and the INA generally. But as explained below, Plaintiffs lack a cause of action based on (a) the Supremacy Clause; (b) the INA, including § 1324;

or (c) equity.[9] As such, they are not members "of the class of litigants that may . . . invoke the power of the court." *Davis v. Passman*, 442 U.S. 228, 239 n.18 (1979).

A. In *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320 (2015), the Court rejected the contention that the Supremacy Clause "creates a cause of action for its violation." *Id.* at 326. The Court explained that the Supremacy Clause "creates a rule of decision" whereby courts "must not give effect to state laws that conflict with federal laws." *Id.* at 324. But it "certainly does not create a cause of action." *Id.* at 325. To the extent Plaintiffs rely on *Georgia Latino Alliance*, 691 F.3d at 1262, where the court held that private plaintiffs "have an implied right of action to assert a preemption claim seeking injunctive . . . relief" under the Supremacy Clause, *id.* at 1262, this holding is no longer good law. *E.g.*, *Lloyd v. Sch. Bd. of Palm Beach Cnty.*, 570 F. Supp. 3d 1165, 1175 (S.D. Fla. 2021) (applying the holding in *Armstrong* to reject a preemption claim without discussing *Georgia Latino Alliance*).

B. Neither does § 1324, nor any other provision of the INA, grant Plaintiffs a cause of action. "[A] private right of action under federal law is not created by mere implication, but must be unambiguously conferred" by Congress. *Armstrong*, 575 U.S. at 332 (quotations omitted). Section 1324 is a criminal statute, and "[n]o case during the last generation creates a private right of action to enforce a statute cast in the form of a criminal prohibition." *Israel Aircraft Indus. Ltd. v. Sanwa Business Credit Corp.*, 16 F.3d 198, 200–01 (7th Cir. 1994). Moreover, the INA expressly vests enforcement of § 1324 in the relevant U.S. Attorney. *See* 8 U.S.C. § 1329 (empowering the U.S. Attorney to "prosecute every suit," whether "civil [or] criminal," "brought by the United States under the provisions of this subchapter"). That is no doubt why the former Fifth Circuit held that "no . . . private remedy exists" for violations of § 1324. *See Flores v. George Braun Packing Co.*, 482 F.2d 279, 280 (5th Cir. 1973).

Similarly, the INA as a whole forecloses private enforcement. It states that the Secretary of the Department of Homeland Security "shall be charged with the administration and enforcement of this chapter . . . except insofar as this chapter . . . relate[s] to the powers, functions, and duties conferred upon" other Executive Branch officers. 8 U.S.C. § 1103. Courts have thus "almost universally rejected efforts to imply private rights of action to enforce the INA." *See Smith v. Smith*, No. 20-9120, 2020 WL 5626982, at *2 (D.N.J. Aug. 18, 2020) (collecting cases).

[9] Plaintiffs do not invoke 42 U.S.C. § 1983. *Compare* Doc. 1 at 31 (invoking § 1983 in support of their vagueness claim), *with* Doc. 1 at 30 (invoking only the Supremacy Clause).

C. Finally, Plaintiffs lack an equitable cause of action because "Congress [has] displace[d] . . . equitable relief." *Armstrong*, 575 U.S. at 329. A plaintiff may not, "by invoking [a court's] equitable powers, circumvent Congress's exclusion of private enforcement." *Id.* at 328. Courts thus find any equitable cause of action displaced where Congress indicates an intent to foreclose private enforcement. *See, e.g.*, *Safe Streets All. v. Hickenlooper*, 859 F.3d 865, 902–04 (10th Cir. 2017) (rejecting a preemption challenge to Colorado's marijuana laws because Congress displaced enforcement of the Controlled Substances Act); *Lloyd*, 570 F. Supp. 3d at 1176 (rejecting a preemption challenge to a school mask mandate because Congress displaced enforcement of the Federal Food, Drug, and Cosmetic Act).

Congress has indicated such an intent here because it "[e]xplicitly confer[red] enforcement of [a] judgment-laden standard" on particular federal officers. *See Armstrong*, 575 U.S. at 328. As discussed, Congress vested enforcement of the INA and § 1324 in specific federal officers. *See* 8 U.S.C. § 1103; 8 U.S.C. § 1324. Moreover, enforcement of the INA involves a "judgment-laden standard." *See United States v. Texas*, 143 S. Ct. 1964, 1971 (2023) (discussing the federal government's "exclusive authority and absolute discretion" (quotations omitted)). In fact, Plaintiffs base their preemption claim on the federal government's "exclusive powers over the regulation of immigration," Doc. 1 at 5, and the need for INA enforcement decisions to be "made with one voice," Doc. 30-1 at 11 (quoting *Arizona*, 567 U.S. at 409–10). They cannot, therefore, bring a private action to enforce the INA against Florida officials.

* * *

The conclusion that Plaintiffs lack a cause of action in federal court to bring their preemption claim does not leave Plaintiffs without a remedy. Plaintiffs may raise their preemption arguments in state court in defense of any prosecution. *See John Doe Co. v. CFPB*, 849 F.3d 1129, 1134 (D.C. Cir. 2017) (explaining that doing so does not "foreclose all meaningful judicial review"); *Palenzuela v. Dade Cnty.*, 486 So. 2d 12, 13 (Fla. 3d DCA 1986) (explaining that a defense to prosecution is available under state law if the applicable statute is invalid). Plaintiffs may also be able to file a preemption claim in state court, where Florida's Declaratory Judgment Act provides a more capacious cause of action. *See* § 86.011, Fla. Stat. (authorizing Florida's trial courts to "declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed"). And Plaintiffs may petition the federal government to challenge § 787.07, which has broader authority to enforce the INA. *See* 8 U.S.C. § 1329 (discussing enforcement of

§ 1324); 8 U.S.C. § 1103 (discussing enforcement of the INA generally); *see, e.g.*, *Arizona*, 567 U.S. at 387.

ii. *Section 787.07 is not preempted*.

Plaintiffs contend that § 787.07 is preempted under theories of both (a) field preemption and (b) conflict preemption,[10] but neither theory is viable.

Courts apply a "presumption against pre-emption," *Wyeth v. Levine*, 555 U.S. 555, 565 n.3 (2009); *Graham v. R.J. Reynolds Tobacco Co.*, 857 F.3d 1169, 1186 (11th Cir. 2017) (noting a "high bar" to show preemption). Further, because this is a pre-enforcement facial challenge, Plaintiffs must show that "no set of circumstances exists under which the [law] would be valid." *Anderson v. Edwards*, 514 U.S. 143, 155 n.6 (1995) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). And if "[t]here is a basic uncertainty about what the law means and how it will be enforced," it is "inappropriate to assume" the law "will be construed in a way that creates a conflict with federal law." *Arizona*, 567 U.S. at 413–15.

A. Section 787.07 is not field preempted. Field preemption occurs only in the "rare case[]" where state law "fall[s] into a field that is implicitly reserved exclusively for federal regulation." *Kansas v. Garcia*, 140 S. Ct. 791, 804 (2020); *see also Nelson v. Great Lakes Educ. Loan Servs., Inc.*, 928 F.3d 639, 651–52 (7th Cir. 2019) (stating that absence of any language from Congress to occupy a field "weighs heavily" against a finding of field preemption). Moreover, even where a state law touches on a preempted field, a law with only "some indirect effect" on that field "is not pre-empted." *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 308 (1988).

The first step in evaluating field preemption is to identify a field. *Kansas*, 140 S. Ct. at 804. Yet Plaintiffs do not clearly indicate the applicable field. Instead, they cite *Georgia Latino Alliance* ad nauseum as if no further analysis is required. Doc. 30-1 at 9–10, 12–13. In that case, however, the preempted field was "prohibitions on the transportation, harboring, and inducement of *unlawfully present aliens*." *Georgia Latino Alliance*, 691 F.3d at 1266 (emphasis added). Indeed, the Georgia statute turned on whether a transported alien was "present in the United States in violation of federal immigration law." *Id.* at 1256.

Here, by contrast, § 787.07 does not regulate aliens, and it does not turn on a person's unlawful presence. Rather, whether alien or citizen, legally present or illegally present, individuals

[10] Plaintiffs' arguments that § 787.07 creates a novel immigration classification and disrupts immigration proceedings, Doc. 30-1 at 13–17, simply misread the statute, *see supra* at 3–5.

may not be transported into Florida unless the federal government has had the opportunity to "inspect" them. Demonstrating the distinction, the most relevant provision of federal law is not in Title 8, which governs immigration, but in Title 19. *See* 19 U.S.C. § 1459 (requiring all persons arriving in the United States to submit to inspection). And Plaintiffs present no argument that Congress has exclusively occupied the field of "transporting individuals who have not been inspected across state lines."

In light of these distinctions, § 787.07 is not field preempted. While the statute may have some effect on the transportation of unauthorized aliens, the Supreme Court recently rejected the idea that merely "relating to" a preempted field makes a state law preempted. *Kansas*, 140 S. Ct. at 804. In other words, the law has only an "indirect effect" on the field at issue in *Georgia Latino Alliance* and is not preempted. *Schneidewind*, 485 U.S. at 308; *accord Keller v. City of Fremont*, 719 F.3d 931, 943 (8th Cir. 2013) ("Plaintiffs made no showing that Congress intended to preempt States and local governments from imposing different penalties for the violation of different state or local prohibitions simply because the prohibited conduct is labeled 'harboring.'"); *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 374 (2015) (holding that a State's regulation of "all businesses in the marketplace," including natural gas companies, was not preempted even though Congress occupied the field of natural gas regulation).

B. Neither is § 787.07 conflict preempted. Conflict preemption "occurs when compliance with both federal and state regulations is impossible or when the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Hillman v. Maretta*, 569 U.S. 483, 490 (2013) (citations omitted) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 66–67 (1941)).

Plaintiffs cannot credibly argue that compliance with state and federal law is impossible, and it appears that their argument focuses on frustration of the "full purposes and objectives of Congress." *Id.* Specifically, Plaintiffs contend that § 787.07 interferes with the federal government's enforcement discretion with respect to 8 U.S.C. § 1324 and even goes beyond the prohibitions in that statute. Doc. 30-1 at 10–12.[11] Plaintiffs' argument fails for three reasons.

[11] Plaintiffs also argue that § 787.07 "attempts to prevent undocumented immigrants from entering and living in Florida," which conflicts with the federal removal scheme. Doc. 30-1 at 12. But not every state law that would "indirectly" have the effect of discouraging aliens from entering the State has the effect of constructively removing the alien. *Compare Keller*, 719 F.3d at 943–44 (finding no conflict preemption with "federal removal system" for city ordinance adding

First, as explained, Plaintiffs misread § 787.07. The challenged statute, unlike 8 U.S.C. § 1324, does not directly regulate the transportation of illegal aliens. And to the extent § 787.07 merely overlaps with federal law in some of its applications, "[t]he mere fact that state laws . . . overlap to some degree with federal criminal provisions does not even begin to make a case for conflict preemption." *Kansas*, 140 S. Ct. at 806. In fact, a contrary rule would turn "[o]ur federal system . . . upside down." *Id.*

Second, § 787.07 is carefully written to avoid the conflict preemption concerns identified in previous cases. Specifically, the Eleventh Circuit has found conflict preemption where state action has the effect of second guessing the Executive Branch's enforcement discretion over immigration. *See, e.g.*, *United States v. Alabama*, 691 F.3d 1269, 1287 (11th Cir. 2012) (finding conflict preemption where the statute "undermine[d] the intent of Congress to confer discretion on the Executive Branch in matters concerning immigration"); *Georgia Latino Alliance*, 691 F.3d at 1265 (finding conflict preemption where the statute was "not conditioned on respect for the federal concerns or the priorities that Congress has explicitly granted executive agencies the authority to establish"). But here, § 787.07 not only prohibits different conduct than § 1324, it also limits its application exclusively to circumstances where the federal government has not exercised any discretion. *See* § 787.07(1), Fla. Stat. (applying only where the passenger "has not been inspected by the Federal Government since his or her unlawful entry").

Put differently, it is impossible for § 787.07 to be enforced against someone whom the federal government has declined to prosecute because the mere act by a federal official of examining an individual and declining to prosecute would render him "inspected" under state law. As such, there can be "no suggestion that . . . prosecutions" of § 787.07 would "frustrate[] any federal interests." *Kansas*, 140 S. Ct. at 806.

Third, § 787.07 does not ask state officers to independently discern a person's immigration status, which some courts have found to be complex and subject to federal discretion. *See Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524, 528–29 (5th Cir. 2013) (en banc) (city ordinance conflicts with federal law by "providing for state judicial review of a non-citizen's

---

verification of immigration status for prospective tenants), *with United States v. Alabama*, 691 F.3d at 1269, 1295 (11th Cir. 2012) (finding conflict preemption where "Alabama has taken upon itself to unilaterally determine that any alien unlawfully present in the United States cannot live within the state's territory"). Section 787.07's narrow application does not come close to effectively prohibiting all unlawfully present aliens from living within the State.

lawful or unlawful presence"). Determining whether a person has been "inspected," by contrast, is not complex because it only requires an assessment of whether the federal government has had the opportunity to examine the person.

B. Plaintiffs are not likely to succeed on the merits of their vagueness claim.

In a facial challenge, a statute is unconstitutionally vague only when it is "utterly devoid of a standard of conduct so that it simply has no core." *SisterSong Women of Color Reprod. Just. Collective v. Governor of Ga.*, 40 F.4th 1320, 1327 (11th Cir. 2022) (quotations omitted). A statute is not vague simply because its "factual application will necessarily entail a case-by-case analysis," so long as it is "reasonably understandable." *United States v. Heaton*, 59 F.4th 1226, 1247 (11th Cir. 2023).

As explained above, § 787.07 has a reasonably understandable meaning: to prohibit interstate transportation of a person whom the government has not had the opportunity to officially examine. *See supra* at 3–5. Contrary to Plaintiffs' assertions, Doc. 30-1 at 17–18, "[t]he mere fact that a statute requires interpretation does not necessarily render it void for vagueness." *Barr v. Galvin*, 626 F.3d 99, 108 (1st Cir. 2010). And Plaintiffs' reliance on competing statements by individual legislators, Doc. 30-1 at 19, merely underscores that legislative history is "more likely to confuse than to clarify," *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring in the judgment).

Finally, to the extent § 787.07 is susceptible to multiple interpretations, the Court should allow state courts to interpret the statute before resorting to wholesale invalidation under the vagueness doctrine. *See, e.g.*, *City of S. Miami v. DeSantis*, 424 F. Supp. 3d 1309, 1335 (S.D. Fla. 2019) (Bloom, J.) (dismissing a facial vagueness challenge as unripe on that basis).

IV. PLAINTIFFS FAIL TO ESTABLISH IRREPARABLE HARM.

Plaintiffs fail to establish irreparable harm for all the reasons they fail to establish standing. *See supra* at 5–12. In addition, Plaintiffs' delay in this case "militates against a finding of irreparable harm." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016) (noting that a delay of "even only a few months" can negate irreparable harm).

As discussed above, the Governor signed the challenged statute on May 10, 2023. Yet Plaintiffs did not serve all Defendants with their Complaint until August 22, Doc. 28, and Plaintiffs did not properly serve the pending motion on the State Defendants until September 1, Doc. 41. To be sure, Plaintiffs filed suit on July 17. But they spent the next seven weeks moving this case at a

snail's pace without explanation, and the only plausible inference for their failure to effect service in a timely fashion is that they are not seriously concerned about irreparable harm. *See Car Body Lab Inc. v. Lithia Motors, Inc.*, No. 21-cv-21484, 2021 WL 2652774, at *10 (S.D. Fla. June 21, 2021) (explaining that "a plaintiff concerned about a harm truly believed to be irreparable would and should act swiftly to protect itself").

V. THE EQUITIES DO NOT FAVOR PRELIMINARY INJUNCTIVE RELIEF.

The equities do not favor granting injunctive relief. "[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (quotations omitted). This rule applies with even more force when "a law . . . reflects legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct." *Virginia v. Hicks*, 539 U.S. 113, 119 (2003) (quotations omitted). Florida's interest in ensuring individuals in its territory are inspected is certainly legitimate. For example, drug traffickers "are successfully smuggling mass quantities of deadly illicit fentanyl past" federal agents,[12] wreaking havoc on Florida's citizens.[13] And none of the conduct Plaintiffs rely on is constitutionally protected.

Moreover, Plaintiffs come to this Court with unclean hands. A preliminary injunction is a form of equitable relief, and "he who comes into equity must come with clean hands." *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945). As explained in discussing Plaintiffs' standing and in opposing anonymous treatment, *supra* at 9–12; Doc. 38 at 8, Plaintiffs seek a preliminary injunction to protect illegal conduct such as driving without a license, working without authorization, and avoiding detection for criminal illegal entry. "An obviously sensible application of [unclean hands] is to withhold an equitable remedy that would

[12] HOUSE COMMITTEE ON HOMELAND SECURITY, *Subcommittee on Border Security and Enforcement Demands Answers in Phase Two of Mayorkas Investigation*, July 13, 2023, https://homeland.house.gov/2023/07/13/dhs-dea-witnesses-testify-on-cartel-fentanyl-smuggling-they-want-to-increase-their-customer-base-and-increase-profits/ (last visited Sep. 15, 2023).

[13] OFFICE OF ATTORNEY GENERAL ASHLEY MOODY, *AG Moody and Law Enforcement Leaders Sound the Alarm as Deadly Fentanyl Catapults Panhandle Counties to Top Spot for Per Capita Opioid Death Rate in Florida*, https://www.myfloridalegal.com/newsrelease/ag-moody-and-law-enforcement-leaders-sound-alarm-deadly-fentanyl-catapults-panhandle#:~:text=The%20state%20average%20per%20capita,District%2C%2060%25%20involved%20fentanyl (last visited Sep. 15, 2023).

encourage . . . illegal activity, as where the injunction would aid in consummating a crime." *Shondel v. McDermott*, 775 F.2d 859, 868 (7th Cir. 1985).[14]

To be clear, the State Defendants do not contend that a person's status as an illegal immigrant forecloses equitable relief in all circumstances. *But see Nat'l Coal. of Latino Clergy, Inc. v. Henry*, No. 07-cv-613, 2007 WL 4390650, *9 (N.D. Ok. Dec. 12, 2007) (applying unclean hands because the plaintiffs sought to "remove any barriers the state of Oklahoma has erected to their continued violation of" federal immigration laws). Here, however, Plaintiffs seek to facilitate *unrelated* violations of law through this lawsuit, and that is fatal to their request for equitable relief.

VI. ANY PRELIMINARY INJUNCTION SHOULD BE LIMITED TO THE PARTIES.

If this Court grants a preliminary injunction, it should limit relief to the Plaintiffs who demonstrate standing. It should decline Plaintiffs' request to issue a universal injunction. *See* Doc. 30-1 at 5 (seeking an injunction preventing enforcement of § 787.07 in general).

Equitable relief has traditionally been "limited in scope to the extent necessary to protect the interests of the parties." *Keener v. Convergys Corp.*, 342 F.3d 1264, 1269 (11th Cir. 2003) (citing cases); *accord McKusick v. City of Melbourne*, 96 F.3d 478, 484 n.5 (11th Cir. 1996); *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165–66 (2010).

As such, the Eleventh Circuit has recognized that "[r]eviewing courts should . . . be skeptical of [universal] injunctions premised on the need to protect nonparties." *Georgia v. President of the United States*, 46 F.4th 1283, 1306 (11th Cir. 2022) (opinion of Grant, J., joined by Anderson, J.). In fact, the Eleventh Circuit routinely stays injunctions that are broader than necessary to remedy a plaintiff's Article III injury. *E.g.*, *Garcia v. Exec. Dir., Fla. Comm'n on Ethics*, No. 23-10872, DE 33 at 2–3 (11th Cir. June 5, 2023).

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' Second Motion for Preliminary Injunction. If it grants an injunction, it should only enjoin enforcement to the extent necessary to remedy an Article III injury of a party before the Court.

---

[14] The State Defendants assert unclean hands as part of balancing the equities, though the Eleventh Circuit also treats it as an affirmative defense. *See Bailey v. TitleMax of Ga., Inc.*, 776 F.3d 797, 801 (11th Cir. 2015). Defendants intend to advance that defense as this case proceeds because Plaintiffs' misconduct is directly related to their claims, and it harms Defendants. *See id.* (explaining the two elements); *see also Florida v. Nelson*, 576 F. Supp. 3d 1017, 1032 (M.D. Fla. 2021) (discussing sovereign injury resulting from an inability to "enforc[e] state law").

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ James H. Percival
James H. Percival (FBN 1016188)
CHIEF OF STAFF

Henry C. Whitaker (FBN 1031175)
SOLICITOR GENERAL

Natalie P. Christmas (FBN 1019180)
COUNSELOR TO THE ATTORNEY GENERAL

Joseph E. Hart (FBN 124720)
COUNSELOR TO THE ATTORNEY GENERAL

Office of the Attorney General
The Capitol, Pl-01
Tallahassee, Florida 32399-1050
(850) 414-3300
(850) 410-2672 (fax)
james.percival@myfloridalegal.com

Counsel for the Attorney General and the Statewide Prosecutor

RON DESANTIS
Governor

/s/ *Nicholas J.P. Meros*
RYAN D. NEWMAN (Fla. Bar #1031451)
General Counsel
NICHOLAS J.P. MEROS (Fla. Bar #120270)
Deputy General Counsel
SAMUEL F. ELLIOTT (Fla. Bar #1039898)
Assistant General Counsel

EXECUTIVE OFFICE OF THE GOVERNOR
The Capitol, PL-5
400 S. Monroe Street
Tallahassee, FL 32399
Phone: (850) 717-9310
Facsimile: (850) 488-9810
Ryan.Newman@eog.myflorida.com
Nicholas.meros@eog.myflorida.com
Samuel.elliott@eog.myflorida.com

Counsel for Governor Ron DeSantis

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2023, a true and correct copy of the foregoing was filed with the Court's CM/ECF system, which provides notice to all parties.

/s/ James H. Percival
James H. Percival